

REMARKS

The examiner's final action dated December 8, 2008, has been received, and its contents carefully noted.

In order to advance prosecution, the previous claims have been amended to be limited to a "cooking appliance" and new claims 24-26 have been added to define a method for cooking food using the appliance defined in claim 1. It is noted that similar claims in co-pending application 10/570,202 have been allowed.

The provisional double patenting rejection presented in Sections 8 and 9 of the action is noted. Since there are other issues to be resolved in this case and the related application has not yet issued as a patent, it is understood that this rejection can be dealt with after all of the other issues, in particular the prior art rejections, in this case have been resolved.

However, since the present application was filed before App. No 11/856,545, it is understood that once all other rejections have been overcome, the double patenting rejection will be withdrawn and this application will be allowed. MPEP §804 I.B.1.

The rejection presented in Sections 9 and 10 is respectfully traversed for the reason that the present

invention, as now claimed, is not disclosed in or suggested by the applied reference, Winter.

In order to avoid needless repetition, the arguments and explanations presented in the response to the prior rejection are incorporated herein by reference, and it is asked that the Examiner again take those arguments into consideration.

As noted above, the previously submitted claims have been amended by deletion of mention of a "kitchen utensil", so that all of those claims are now limited to a cooking appliance.

In the explanation of the prior art rejection, the Examiner asserts that the rejected claims do not define any "particular structure...that could not be said of basic stock material used for Winter's purposes." In section 14 of the action, the Examiner reiterates that a "kitchen utensil" or "appliance body" can have any conventional or unconventional configuration.

Independent claim 1 has now been amended to refer only to "a cooking appliance comprising a cooking appliance body". Although it is true, as the Examiner states, that a cooking appliance can have any conventional or unconventional figuration, the fact remains that any known cooking appliance is readily recognizable as such and that a clad metal strip,

such as disclosed in the applied reference (Winter) would not be considered by anyone, whether skilled in the art or not, to be a cooking appliance. It is respectfully submitted that the fact that one could conceivably cook something on such a metal strip does not transform the metal strip into a cooking appliance; no one would consider using such a strip as a cooking appliance.

The reason why the metal strip disclosed in the reference cannot be considered to be a cooking appliance is that the term "cooking appliance" has a clear ordinary meaning, which cannot be ignored when judging the patentability of an application claim, in which all terms are interpreted according to their ordinary meaning unless a different meaning is indicated in the specification. To ignore the ordinary meaning of terms used in the claims is to deprive applicants of the ability to properly define their invention.

As regards reliance of 35 U.S.C. §102 to support the rejection of the pending claims, it is submitted that there is no reason to believe that a flat strip of metal would be considered by anyone to be a cooking appliance simply because there is no known cooking appliance having this form.

As regards reliance on 35 U.S.C. §103 to support the rejection, it is submitted that neither Winter nor any other

prior art record contains the least suggestion of forming a metal strip into a cooking appliance having any known cooking appliance configuration.

Furthermore, while it is understood that Zircaloy is used for a variety of purposes, none of the *known* purposes can be considered to correspond to the use of such an alloy as a food cooking surface. The rejected claims do not simply define a previously unknown property of a known material, but rather a novel product, *i.e.*, a cooking appliance, that makes beneficial use of that property. Thus, unlike the fact situation in *In re Spada*, cited on page 8 of the action, where the invention and the prior art appeared to relate to the same *composition*, the present invention is directed to a cooking appliance, which is a product, or article, different from a flat strip. Patentability can properly reside in a particular product that makes beneficial use of a previously unknown property of a known material. In the present case, the product claimed in this application is different from the product disclosed in the applied reference.

In any event, claim 1 now positively recites a cooking appliance comprising a cooking appliance body and a food contacting surface adhered to a surface of said body.

It is submitted that the recitation of "a cooking appliance body" as a positively recited element of the claimed

device cannot be ignored and must be interpreted according to its plain meaning, which is a body that is constructed and used for cooking.

Correspondingly, the combination of such a body and a food contacting surface adhered to a surface of that body represents a structure that is clearly not disclosed by Winter and for which no suggestion can be found in that reference.

Of course, anyone, whether skilled in the art or not, would understand that a body of a cooking appliance will have a certain form and certain thermal characteristics.

It is believed that, in view of the amendments made to the claims to include a positive recitation of a cooking appliance body and a food contacting surface adhered to the body, the issue that must be addressed is not whether Zircaloy is *capable* of being used as a cooking surface, but rather whether it was known, or would be obvious to those skilled in the art, to produce a cooking appliance having a body and a cooking surface made of that alloy. Since it was not *known* in the art that an alloy having the composition defined in claim 1 could serve as a superior cooking surface, it must be concluded that the combination now defined in the claims is not obvious in view of the prior art.

Accordingly, it is requested that the prior art rejection be reconsidered and withdrawn, that the pending

claims be allowed and that the application be found in allowable condition.

If the above amendment should not now place the application in condition for allowance, the Examiner is invited to call undersigned counsel to resolve any remaining issues.

Respectfully submitted,

BROWDY AND NEIMARK, P.L.L.C.  
Attorneys for Applicant(s)

By /jmf/  
Jay M. Finkelstein  
Registration No. 21,082

JMF:smb  
Telephone No.: (202) 628-5197  
Facsimile No.: (202) 737-3528  
G:\BN\S\seb\Coudurier2\pto\2009-03-06 Amendment AF.doc